IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 48 OF 2006

Commissioner of Central Excise
Thane-I. ... Appellant.

V/s.

M/s.Hindustan Coco Cola Beverages
Pvt.Ltd., Thane. ... Respondent.

A.S.Rao with S.M.Shah and Y.S.Bhate i/b.
T.C.Kaushik for the appellant.

Vikram Nankani with Madhur Baya
for the respondent.

CORAM : **DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.**

DATED : **21st March 2007.**

P.C. :

. Heard learned counsel for the appellant and learned counsel for the respondent.

2. The learned counsel for the appellant seeks leave to amend the questions of law as per the draft tendered herein. The draft for additional questions of law tendered by the learned counsel for the appellant is taken on record and marked 'X' for identification. As per the said draft following questions are sought to be amended:

1. Whether in the fact circumstances of the case and in law, the interpretation of Rule 57AC of the Central Excise Rules made by the tribunal is legal and proper?

2. Whether the tribunal is justified in deciding the appeal without recourse to the provisions of Rule 57AD of Central Excise Rules?

3. Mr.Rao sought to contend that the Tribunal had interpreted the provisions of rule 57AC of the Central Excise Rules erroneously. In the sense, he contended that if once credit is availed of, whether the same was reversed later on is immaterial and rule 57AD ought to have been applied.

4. The learned counsel appearing for the respondent brought to our notice judgment of the Supreme Court in the case of **Eicher Motors Ltd. v. Union of India**, 1999 (106) ELT 3 (SC); wherein the Supreme Court has very clearly observed in para 5 as under:

> "..... it loses sight of the fact that provision for facility of credit is as good as tax paid till tax is adjusted on

> future goods on the basis of the several commitments which would have been made by the assessees concerned....."

The Supreme Court further observed as under:

> "..... we have no hesitation to hold that the rule cannot be applied to the goods manufactured prior to 16-3-1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods."

To put in other words, if once credit is availed of and or the same has been reversed, the same has to be treated as assessee not availing the credit.

5. In the light of the same, we do not find any substantial question of law involved in this appeal. Appeal is, thus, dismissed.

(V.C.DAGA J.) **(DR.S.RADHAKRISHNAN)**